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6 Attorneys for Plaintiffs, Automotive Industries  
7 Pension Trust Fund et al.

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10  
11 AUTOMOTIVE INDUSTRIES PENSION Case No.:  
12 TRUST FUND, AUTOMOTIVE INDUSTRIES  
13 WELFARE TRUST FUND, JAMES H. BENO,  
14 Trustee, TOM DILLON, Trustee, STEPHEN J.  
15 MACK, Trustee, DON CROSATTO, Trustee,  
16 JOHN DI BERNARDO, Trustee, JAMES  
17 SCHWANTZ, Trustee, RYAN THIBODEAU,  
18 Trustee, and RICH MORALES, Trustee,

19 Plaintiffs,  
20 vs.

21 PLEASANTON AUTOMOTIVE COMPANY,  
22 a general partnership, dba PLEASANTON  
23 AUTO MALL and dba ACURA OF  
24 PLEASANTON; LOP AUTOMOTIVE  
25 COMPANY LIMITED PARTNERSHIP f/k/a  
26 LOP AUTOMOTIVE COMPANY LLC dba  
27 LEXUS OF PLEASANTON; ROSEWOOD III  
AUTOMOTIVE COMPANY, a general  
partnership, dba INFINITI OF PLEASANTON;  
HENDRICK AUTOMOTIVE GROUP, a North  
Carolina general partnership; HPG AUTO  
INVESTORS LIMITED PARTNERSHIP;  
HENDRICK MANAGEMENT COMPANY  
LIMITED PARTNERSHIP.

Defendants.

**COMPLAINT**

28

COMPLAINT

**PARTIES**

1           1. Plaintiffs Automotive Industries Pension Trust Fund (“Pension Fund”) and  
 2 Automotive Industries Welfare Trust Fund (“Welfare Fund”) (collectively hereinafter “the Funds”)  
 3 are multiemployer joint labor-management welfare funds established pursuant to Section 302(c) of  
 4 the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 186(c). Plaintiff Funds maintain  
 5 their principal office and are administered in Dublin, California. The purpose of the Funds is to  
 6 provide pension and welfare related benefits to the eligible employees of employers who contribute  
 7 to the Funds pursuant to various collective bargaining agreements (“Bargaining Agreements”) with  
 8 local unions affiliated with the Automotive Industries Pension Plan and the Automotive Industries  
 9 Health and Welfare Plan (“the Plans”). Plaintiffs James H. Beno, Tom Dillon, Stephen J. Mack,  
 10 Don Crosatto, John DiBernardo, James Schwantz, Ryan Thibodeau and Rich Morales are Trustees  
 11 of the Funds.

12           2. At all times relevant, Defendants Pleasanton Automotive Company, a general  
 13 partnership, dba Pleasanton Auto Mall and dba Acura of Pleasanton, LOP Automotive Company  
 14 Limited Partnership f/k/a/ LOP Automotive Company LLC, dba Lexus of Pleasanton, and  
 15 Rosewood III Automotive Company, a general partnership, dba Infiniti of Pleasanton were  
 16 business entities registered to do business in the State of California with their last known principal  
 17 place of business in the city of Pleasanton, California (collectively “Pleasanton Auto Mall”). The  
 18 general and/or managing partner of Pleasanton Automotive Company, LOP Automotive Company  
 19 Limited Partnership, and Rosewood III Automotive Company is Hendrick Automotive Group, a  
 20 North Carolina general partnership, whose general partners are HPG Auto Investors Limited  
 21 Partnership and Hendrick Management Company Limited Partnership.

22           3. Pleasanton Auto Mall is principally engaged in the business of operating car  
 23 dealerships in the automotive industry. To this end, Pleasanton Auto Mall employs machinists  
 24 covered under the Bargaining Agreements and Trust Agreements by which it is bound, who  
 25 provide support services to Pleasanton Auto Mall. The business of Pleasanton Auto Mall affects  
 26 commerce within the meaning of Section 301 of the LMRA (29 U.S.C. § 185).

27           ///

## **JURISDICTION**

2       4. Jurisdiction exists in this Court over the claims asserted by the Plaintiff Funds by  
3 virtue of ERISA § 502, 29 U.S.C. § 1132, in that the Plaintiff Funds seek to enforce the provisions  
4 of ERISA and the terms of their plans, seek to enjoin the acts and practices that violate ERISA,  
5 seek equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

6       5.     Jurisdiction exists in this Court over all the claims by virtue of Section 301 of the  
7 Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185, in that the Plaintiff Funds seek to  
8 enforce the terms and conditions of the Bargaining Agreements between the employer and a labor  
9 organization.

## **VENUE**

11       6.   Venue exists in this Court with respect to the claims under ERISA § 502, 29 U.S.C. §  
12 1132, because Plaintiff Funds are administered in this district, and the breaches under ERISA  
13 occurred in this district.

## **APPLICABLE LAW**

15        7. Section 515 of ERISA, 29 U.S.C. § 1145, requires employers who are obligated to  
16 make contributions to a multiemployer plan do so in accordance with the terms of the Bargaining  
17 Agreements.

18 | 8. ERISA § 502(g)(2), 29 U.S.C. § 1132(g)(2), provides as follows:

In any action under this title by a fiduciary for or on behalf of a plan to enforce  
Section 515 in which a judgment in favor of the plan is awarded, the court shall award  
the plan:

- (A) the unpaid contributions,
  - (B) interest on the unpaid contributions,
  - (C) an amount equal to the greater of:
    - (i) interest on the unpaid contributions, or
    - (ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted

under Federal or State law) of the amount determined by the court under subparagraph (A),

- (D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and
  - (E) such other legal or equitable relief as the court deems appropriate. For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under Section 6621 of the Internal Revenue Code of 1954.

9        9. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a civil action by the Trustees as  
10      ERISA fiduciaries:

- 11                   (A) to enjoin any act or practice which violates any provision of this title or the  
12                   terms of the plan, or  
13                   (B) to obtain other appropriate equitable relief  
14                   (i) to redress such violations, or  
15                   (ii) to enforce any provision of this title or the terms of the plan.

16        10. ERISA § 209 (29 U.S.C. § 1059), recordkeeping and reporting requirements, states in  
17 relevant part:

18 (a)(1) Except as provided by paragraph (2) every employer shall, in accordance  
19 with regulations prescribed by the Secretary, maintain records with respect to  
20 each of his employees sufficient to determine the benefits due or which may  
21 become due to such employees.

22        11. The Trustees have a right under ERISA to conduct an audit of a contributing  
23 employer's relevant books and records under the terms of the Trust Agreements. *Central States,*  
24 *Southeast and Southwest Areas Pension Fund v Central Transport, Inc.*, 472 US 559 (1985), *reh'g*  
25 denied 473 U.S. 926.

FACTS

27        12. At all times relevant to this action, Pleasanton Auto Mall was a party to and bound by  
28 Bargaining Agreements covering its employees (“Bargaining Agreements”). The Bargaining

1 Agreements requires that Pleasanton Auto Mall contribute to the Funds at specified rates for each  
 2 of its eligible employees covered under the Bargaining Agreements.

3       13. As an employer participating in the Funds, Pleasanton Auto Mall is bound by the  
 4 Trust Agreements and establishing the Funds, the terms of the Funds' Plan Documents, and the  
 5 rules, regulations and policies adopted by the Trustees under the authority of the Trust Agreements.

6       14. Pleasanton Auto Mall had both a contractual duty under the Bargaining Agreements  
 7 and a statutory duty under ERISA § 515 (29 U.S.C. § 1145) to timely make payment in full of the  
 8 required contributions due the Funds according to its terms or the terms of the Bargaining  
 9 Agreement.

10      15. At all times relevant to this action, under the provisions of the Trust Agreements, the  
 11 rules, regulations and policies adopted by the Trustees thereunder, and the Bargaining Agreements  
 12 governing Pension, Welfare and Apprenticeship Training contributions due, Pleasanton Auto Mall  
 13 was required to timely submit monthly remittance reports of all covered employees, along with  
 14 contributions owed, to the Funds' principal place of business by the first day of each month  
 15 following the month in which the covered work was performed.

16      16. At all times relevant to this action, under the Trust Agreements, the rules, regulations  
 17 and policies adopted by the Trustees thereunder, and the Bargaining Agreements, Pension and  
 18 Welfare contributions received by the Funds after the 20<sup>th</sup> day of the month following the month in  
 19 which the covered work was performed are deemed delinquent.

20      17. At all times relevant to this action, in accordance with ERISA § 502(g)(2)(B), 29  
 21 U.S.C. § 1132(g)(2)(B), the Pension and Welfare Agreements, and the rules, regulations and  
 22 policies adopted by the Trustees thereunder, provided that delinquent contributions shall accrue  
 23 interest at the rate of ten percent (10%) simple interest per annum from the first day of the month  
 24 following the month in which the delinquent contributions were due through and including the date  
 25 payment is made.

26      18. At all times relevant to this action, in accordance with ERISA § 502(g)(2)(C), 29  
 27 U.S.C. § 1132(g)(2)(C), in accordance with the Pension and Welfare Trust Agreements and the  
 28 rules, regulations and policies adopted by the Trustees thereunder, the employer is obligated to pay

1 liquidated damages in the amount of five percent (5%) of the amount of delinquent contributions  
 2 owed until the matter was referred to the Funds' counsel for collection, and twenty percent (20%)  
 3 thereafter.

4       19. At all times relevant to this action in accordance with ERISA § 502(g)(2)(C), 29  
 5 U.S.C. § 1132(g)(2)(C), the Trust Agreements and the rules, regulations and policies adopted by  
 6 the Trustees thereunder, provided that after the filing of a lawsuit, liquidated damages shall be  
 7 increased to the greater of (a) the interest on the delinquent contributions, or (b) twenty percent  
 8 (20%) of the delinquent contributions.

9       20. At all times relevant to this action, in accordance with ERISA § 502(g)(2)(D) and (E),  
 10 29 U.S.C. § 1132(g)(2)(D) and (E), the Trust Agreements and the rules, regulations and policies  
 11 adopted by the Trustees thereunder provided that in the event of a lawsuit, in addition to the  
 12 contributions, interest and liquidated damages due to the Funds, the delinquent contributing  
 13 employer shall pay to the Funds all reasonable attorneys' fees and costs incurred as a result of the  
 14 litigation.

15       21. At all times relevant to this action, in accordance with ERISA § 502(g)(2)(D) and (E),  
 16 29 U.S.C. § 1132(g)(2)(D) and (E), the Trust Agreements and the rules, regulations and policies  
 17 adopted by the Trustees thereunder, authorized the Funds to examine and copy such records of  
 18 Pleasanton Auto Mall as may be necessary to determine whether Pleasanton Auto Mall has made  
 19 full and prompt payment of all sums due to the Funds.

20       22. Pleasanton Auto Mall has failed to make payment in a timely manner and failed to  
 21 make full payment of contributions due the Funds as found due by audit for the period March 1,  
 22 2013 through February 29, 2016, and for the months of November 2017, December 2017, March  
 23 2018 and April 2018, resulting in Pleasanton Auto Mall's owing delinquent contributions to the  
 24 Funds, plus interest at 10% per annum on the late paid and unpaid contributions, and liquidated  
 25 damages assessed at 20% of the unpaid contributions, or interest, whichever is greater. Pleasanton  
 26 Auto Mall is therefore in breach of the Bargaining Agreements between the Funds and Pleasanton  
 27 Auto Mall in effect during the above period and thereby breached the terms of the Trust Agreement  
 28

1 to which Pleasanton Auto Mall is bound, and is therefore liable to the Funds for payment of  
2 delinquent contributions, liquidated damages, interest and reasonable attorney's fees and costs.

3           23. In addition, despite numerous demands, Pleasanton Auto Mall has failed and refused  
4 to comply with a further audit of its payroll records for the period March 1, 2016 through the  
5 present.

## **FIRST CAUSE OF ACTION**

## **For Payment of Delinquent Contributions, Interest, Liquidated Damages, Attorneys' Fees and Costs Against Pleasanton Auto Mall**

9           24. Plaintiffs re-allege and incorporate by reference paragraphs 1 – 23 above as though  
10 fully set forth herein.

11        25. Pleasanton Auto Mall as a party to the Bargaining Agreements agreed to be bound by  
12 the terms thereof and by the Terms of the Trust Agreements, the rules, regulations and policies  
13 adopted by the Trustees thereunder, and Plan documents.

14        26. Pleasanton Auto Mall violated ERISA § 515 (29 U.S.C. § 1145), by failing to timely  
15 make payment of contributions and to make payment in full of contributions due to the Funds in  
16 accordance with its obligation to do so under the terms of the Bargaining Agreements entered into  
17 between the Funds and Pleasanton Auto Mall and the terms of the Trust Agreements.

18        27. Under ERISA § 502(g)(2)(A) through (E) (29 U.S.C. § 1132(g)(2) (A) through (E)),  
19 Pleasanton Auto Mall is liable for payment of delinquent unpaid contributions, as well as for  
20 interest, liquidated damages, attorneys' fees and costs.

## **SECOND CAUSE OF ACTION**

## Injunctive Relief Under ERISA §§ 502(a)(3) and 502(g)(2)(E)

23        28. Plaintiffs re-allege and incorporate by reference paragraphs 1 – 27 above as though  
24 fully set forth herein.

25        29. Pleasanton Auto Mall is also liable for payment of any additional delinquent  
26 contributions that may be revealed by audit or during discovery or investigation of this matter, and  
27 any additional contributions that may become delinquent prior to judgment, plus interest and  
28 liquidated damages on any such amounts.

1       30. Plaintiffs are without adequate remedy at law and the Funds will suffer continuing  
2 and irreparable injury, loss and damage unless Pleasanton Auto Mall is ordered specifically to  
3 perform all obligations required on Pleasanton Auto Mall's part to be performed under ERISA, 29  
4 U.S.C. §§ 1101-1381, the Bargaining Agreements, and the Trust Agreement, including but not  
5 limited to allowing the Trust's representative access to those business records of Pleasanton Auto  
6 Mall that the Funds' representative identifies as necessary to conduct an audit, and requiring  
7 Pleasanton Auto Mall to make timely monthly reports and payment to the Funds; is restrained from  
8 continuing to refuse to perform as required thereunder; and to pay all contributions, interest,  
9 liquidated damages, costs, attorneys' fees and accountants' fees determined to be due Plaintiff  
10 Funds.

11       31. This Court is authorized to issue injunctive relief under ERISA §s 502(a)(3) (29  
12 U.S.C. § 1132(a)(3)) and 502(g)(2)(E) (29 U.S.C. § 1132(g)(2)(E)). As set forth above, Plaintiffs  
13 have a strong likelihood of success on the merits, there is the possibility that the Board of Trustees  
14 and the participants will suffer irreparable injuries, and the balance of hardships and advancement  
15 of public interest favor Plaintiffs.

## **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray as follows:

18           1. For judgment against Pleasanton Auto Mall, in favor of the Plaintiffs, in an amount  
19 equal to at least:

(a) Any unpaid contributions due the Pension Fund, according to proof, for contributions owed on behalf of covered employees during the period March 1, 2013 through the present, under ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A), and the Bargaining Agreements:

23                   (b) Any unpaid contributions due the Welfare Fund, according to proof, for  
24 contributions owed on behalf of covered employees during the period March 1, 2013 through the  
25 present, under ERISA § 502(g)(2)(A) (29 U.S.C. § 1132(g)(2)(A)), and the Bargaining  
26 Agreements;

27 (c) Interest on any unpaid Pension contributions found to be due during the period  
28 March 1, 2013 through the present, at the rates set in accordance with the Bargaining Agreements,

1 the governing documents of the Pension Fund, and ERISA § 502(g)(2)(B) (29 U.S.C. §  
 2 1132(g)(2)(B));

3                 (d) Interest on any unpaid Welfare contributions found to be due during the period  
 4 March 1, 2013 through the present, at the rates set in accordance with the Bargaining Agreements,  
 5 the governing documents of the Welfare Fund, and ERISA § 502(g)(2)(B) (29 U.S.C. §  
 6 1132(g)(2)(B));

7                 (e) Under ERISA § 502(g)(2)(C) (29 U.S.C. § 1132(g)(2)(C)), an award of  
 8 liquidated damages in an amount equal to the greater of:

9                         (i) Interest on the unpaid contributions, or  
 10                         (ii) Liquidated damages at 20% of the unpaid contributions found due for the  
 11 period December 1, 2013 through the present, as provided for under the Bargaining Agreements  
 12 and the governing documents of the Plans.

13                 (f) Plaintiffs' reasonable attorneys' fees and costs of this action in accordance with  
 14 ERISA § 502(g)(2)(D) (29 U.S.C. § 1132(g)(2)(D)); reasonable attorneys' fees and costs in  
 15 accordance with the Trust Agreements and in accordance with LMRA Section 301, 29 U.S.C. §  
 16 185, for all Plaintiffs;

17                 2. For an order directed to Pleasanton Auto Mall, pursuant to the Court's equitable power  
 18 under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), and under ERISA § 502(g)(2)(E), 29 U.S.C. §  
 19 1132(g)(2)(E), requiring Pleasanton Auto Mall to perform all obligations required on its part to be  
 20 performed under its Bargaining Agreements, and the Trust Agreements, including but not limited to

21                         (a) Requiring Pleasanton Auto Mall to allow the Funds' representative access to  
 22 those business records of Pleasanton Auto Mall that the Funds' representative  
 23 identifies as necessary to conduct an audit for the period March 1, 2016 to the  
 24 present;

25                         (b) Requiring Pleasanton Auto Mall to pay all contributions, interest, liquidated  
 26 damages, costs, attorneys' fees and accountants' fees determined to be due the  
 27 Funds.

28                 3. That the Court retain jurisdiction of this case pending compliance with its orders; and

4. For such other and further relief as the Court may deem just and proper.

Dated: January 7, 2021

SALTZMAN & JOHNSON LAW CORPORATION

By: Tino X. Do /S/  
Attorneys for Plaintiffs